UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by D.C.
APR 04 2003
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

CASE NO. 01-4035-CIV-MARTINEZ/DUBE

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

G.F.B. ENTERPRISES, LLC., d/b/a LEXUS OF KENDALL,

Defendant.

JESUS MOLINA, HUMFREDO PEREZ, FELIX QUEVADO, AVRAHAM MARDO, and SUSAN WEINBERG,

Intervenors,

v.

G.F.B. ENTERPRISES, LLC., d/b/a LEXUS OF KENDALL,

Defendant.

CONSENT DECREE

1. This Consent Decree (the "Decree") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or "EEOC") and Defendant, G.F.B. Enterprises, LLC d/b/a/ Lexus of Kendall (hereinafter referred to as "Defendant"). The Commission and Defendant are collectively referred to herein as "the Parties."

2. On September 28, 2001, EEOC initiated this action by filing its Complaint against

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Defendant. EEOC's Complaint alleged that Defendant violated Title VII of the Civil Rights Act of 1964, as amended, including but not limited to, amendments authorized by the Civil Rights Act of 1991, 42 U.S.C. Section 2000e *et seq.* ("Title VII"), by subjecting Avraham Mardo, Jesus Molina, Humfredo Perez, and Felix Quevedo, and similarly situated black employees, to harassment.

3. On or about April 1, 2002, Defendant filed its Answer to Plaintiff EEOC's Complaint denying that its actions were discriminatory in any way. Nothing herein shall be deemed to be an admission by Defendant that it has at any time violated Title VII of the Civil Rights Act of 1964, as amended.

4. In the interests of resolving this matter, to avoid the costs of litigation, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. This Decree is final and binding upon the Parties, their successors and assigns.

5. This Decree constitutes the complete agreement between the EEOC, and Defendant with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved or ordered by the Court.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings filed by the parties, it is **ORDERED, ADJUDGED AND DECREED THAT**:

6. This Court has jurisdiction of the subject matter of this action and over the parties for the purposes of entering and enforcing this Decree.

GENERAL INJUNCTIVE PROVISIONS

7. Defendant, its officers, managers, agents and partners, are enjoined from

discriminating against any employee who opposes any of Defendant's practices which the employee believes to be a violation of Title VII; who files a charge of discrimination with the EEOC alleging violation(s) of such statute; who cooperates with the EEOC in the investigation and/or prosecution of any charge of discrimination; or who cooperated in the investigation or prosecution of this case.

8. Defendant, its officers, managers, agents and partners, agree that they will not engage in any conduct which violates Title VII of the Civil Rights Act of 1964, as amended, by adversely affecting the terms and conditions of any individual's employment or by discharging an employee for opposing or participating in any Title VII statutorily protected activity.

TRAINING

9. Defendant has established a written policy of compliance with Title VII. A copy of Defendant's Title VII compliance policy has been provided to the EEOC and Defendant certifies that a complete copy of its Title VII policy will be provided to all its current employees at G.F.B. Enterprises' facility on or before July 30, 2003. Defendant further agrees that all new employees will be provided a copy of the policy as part of the new employee orientation process within one (1) week of association with Defendant.

10. In order to further insure the effective implementation of Defendant's anti-discrimination policies, Defendant will conduct training for all of its managers and supervisory personnel on all aspects of Title VII. Such training will be conducted by Muller Mintz, P.A., or any other firm or organization specializing in the area of employment discrimination approved by the EEOC, and shall last at least four (4) hours. The first training shall be conducted on or before July 30, 2003 and thereafter on a yearly basis throughout the duration of this decree. Defendant agrees to provide the EEOC, at least two (2) weeks notice before it conducts its training session(s); date(s) of the training; copies of all training material to be used at the training session; and a list of the

names and titles of each employee who will be in attendance at the training. Additionally, Defendant agrees that the EEOC shall, at its discretion, be in attendance at the training session(s), and the EEOC shall notify Defendant, one (1) week in advance, that a representative will be in attendance.

POSTING

11. Defendant will post within seven (7) days from the Court's execution of this Decree a laminated 11" x 17" size copy of the Notice attached hereto as Exhibit A. Said notice shall be posted at G.F.B. Enterprises' facility for the duration of this Decree in conspicuous locations accessible to all employees.

MONITORING

12. Defendant will retain all employment records relating in any way to any complaint, allegation and/or investigation of race, national origin, and religious harassment, at G.F.B Enterprises' facility for the duration of this Decree and as required by law.

13. Defendant will certify to the EEOC every six (6) months throughout the duration of this Decree that it is in compliance with all aspects of this Decree. The first such certification will be due no later than September 4, 2003. With each such certification, Defendant will provide the EEOC with the name, address and phone number of any person who alleges they have been subjected to race, national origin, and/or religious harassment while working at G.F.B. Enterprises' facility during the preceding six (6) months. Defendant will also state its actions taken in response to each such allegation. Defendant will provide upon request by the Commission (a) a copy of the complaint, or if no written complaint was filed, a statement describing the nature of the complaint; (b) a statement describing the actions taken; and (c) outcome regarding such complaint.

MONETARY RELIEF

14. Defendant shall cause to be paid a lump sum of seven hundred thousand ($700,000) in resolution of this litigation. Six hundred thousand ($600,000) represents compensatory damages and shall be distributed to the aggrieved claimants currently identified. The remaining one hundred thousand ($100,000) also represents compensatory damages and shall be distributed to Black aggrieved claimants who worked for Defendant at any time between January 1, 1998 to December 31, 2002. Because these amounts represent compensatory damages, Defendant shall have no responsibility for deducting payroll taxes. No portion of the seven hundred thousand ($700,000) shall remit to Defendant.

15. Within ten (10) days of the Court's execution of this Decree, Defendant will cause to be issued a certified check in the amount of seven hundred thousand ($700,000) payable to the trust account of the Law Offices of Robert E. Weisberg, P.A. Such payment shall be forwarded by certified mail with a return receipt requested to: Robert E. Weisberg, Esq., 1450 Madruga Avenue, Suite 209, Coral Gables, Florida 33146. A copy of the certified check shall be forwarded to the attention of Kenneth L. Gillespie, EEOC Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

16. If Defendant fails to tender the above-mentioned payments as set forth in paragraph 14, then Defendant shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.

NOTICE TOPOTENTIAL AGGRIEVED INDIVIDUALS

17. The Parties agree that potential claimants shall be current or former Black employees who work/worked for Lexus of Kendall at any time between January 1, 1998 to December 31, 2002, and who submit credible evidence of being subjected to a racially hostile

environment.

18. Defendant shall provide to the EEOC information in its possession necessary for contacting potential claimants on or before April 11, 2003. This information shall be utilized for the purposes of identifying Black aggrieved individuals who were subjected to a racially hostile environment during the period stated in Paragraph # 17.

19. The EEOC shall provide notice to all eligible claimants as described in Paragraph 18, via certified mail, that a settlement has been reached among all the Parties to this action on or before May 2, 2003. Potential claimants shall be further advised that, if they wish to make application for an award from the Claimant Fund, they must do so in a writing mailed to the EEOC's Miami District Office post marked on or before May 30, 2003. The notice shall provide that Defendant shall take no adverse action against any individual for filing such an application. A copy of such notice is attached as Exhibit B, and the application is attached as Exhibit C.

20. The EEOC shall notify all potential claimants as to whether their applications to share in theClaimant Fund have been granted and the amount to be received by each on or before July 4, 2003. (A copy of such notice is attached as Exhibit D).

21. Potential claimants shall submit letters to the court by July 25, 2003, indicating any disagreement they may have with their claimant status/proposed award and the reasons therefore. This procedure will be the sole means by which claimants may challenge their claimant status or the handling of their proposed monetary award.

22. Within ten (10) days of the court's approval of the potential claimant distribution, the EEOC shall direct Robert E. Weisberg, Esq., to mail settlement checks drawn on the trust account of the Law Offices of Robert E. Weisberg, P.A., in accordance with the Court's Order. Within three (3) days after all such payments have been made, a copy of the checks shall be forwarded to the

attention of Kenneth L. Gillespie, EEOC Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

23. The remedies provided under this Consent Decree shall be the exclusive remedies available under Title VII to any current or former employee of Defendant with a claim of race discrimination arising from the alleged racially hostile environment at Defendant's facility between the claim period of January 1, 1998, to December 31, 2002.

ENFORCEMENT OF DECREE

24. The Commission and Defendant will make best efforts to effectuate the terms of this Decree.

25. The Commission shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree.

COSTS

26. Each Party shall bear its own costs and attorneys' fees associated with this litigation.

DURATION OF CONSENT DECREE

27. The duration of this Decree shall be four (4) years from the date of entry of the Decree.

28. This case will be dismissed with prejudice. However, the Court will retain jurisdiction to enforce the monetary and injunctive provisions of this Consent Decree during the four year period that said Decree is in effect.

SO ORDERED, ADJUDGED AND DECREED, this 4 day of April, 2003.

United States District Judge

AGREED TO:

FOR THE PLAINTIFF,
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by: ______________________ Date: 3/31/03

Delner Franklin-Thomas
Regional Attorney
U.S. Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, Florida 33131

AGREED TO:
FOR DEFENDANT

by: Carmen S. Johnson Date: 3/31/03

CARMEN JOHNSON, ESQ.
JAMES BRAMNICK, ESQ.
Muller, Mintz, P.A.
Wachovia Financial Center
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131-2338

EXHIBIT "A"

**NOTICE TO ALL EMPLOYEES
POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND
G.F.B. ENTERPRISES, LLC D/B/A LEXUS OF KENDALL**

This notice is being posted pursuant to a Consent Decree entered by the Court in Equal Employment Opportunity Commission v. G.F.B. Enterprises, LLC d/b/a Lexus of Kendall, Civil Action No. 01-4035-CIV-MARTINEZ/DUBE. G.F.B. Enterprises, LLC d/b/a Lexus of Kendall has agreed that it will not discriminate against employees in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from discrimination because of the race, religion, color, sex (including sexual harassment and pregnancy) and/or national origin. Title VII also protects individuals from retaliation for having complained of an unlawful employment practice. G.F.B. Enterprises, LLC d/b/a Lexus of Kendall will not condone discrimination of any kind as set forth in federal laws, including, but not limited to, racial, religious or national origin harassment.

Furthermore, G.F.B. Enterprises, LLC d/b/a Lexus of Kendall assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC. Appropriate corrective action, up to and including termination, shall be taken against any employee (including management personnel) found to violate the policies regarding discrimination, based upon the circumstances involved.

This notice shall remain posted for four (4) years from the date signed. Employees or applicants for employment who have questions about their rights under Title VII or any other federal anti-discrimination law may telephone the Miami District Office of the Equal Employment Opportunity Commission at 1-800-669-4000.

Signed this ____ day of ______, 2003

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CEO, G.F.B. Enterprises, LLC
d/b/a Lexus of Kendall

EXHIBIT "B"
U.S.E.E.O.C. VS. G.F.B. ENTERPRISES, LLC D/B/A/ LEXUS OF KENDALL

NOTICE

ATTENTION ALL CURRENT AND FORMER BLACK EMPLOYEES WHO WORK/WORKED AT LEXUS OF KENDALL AT ANYTIME BETWEEN JANUARY 1, 1998, AND DECEMBER 31, 2002

G.F.B. Enterprises, LLC d/b/a Lexus of Kendall, has entered into a consent decree with the United States Equal Employment Opportunity Commission ("EEOC"), an agency of the United States Government to resolve a lawsuit filed by the EEOC against Lexus of Kendall pursuant to Title VII of the Civil Rights Act of 1964, as amended, ("Title VII'). If you were subjected to a racially hostile environment between January 1, 1998 and December 31, 2002, you may be qualified to participate in the settlement of this lawsuit. You must act immediately to preserve your rights by completing the enclosed claim form.

The claim form must be returned to EEOC, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, FL 33131. All claims will be thoroughly reviewed by the EEOC to determine eligibility for participation in the settlement.

G.F.B. Enterprises, LLC d/b/a Lexus of Kendall, agrees that it will take no adverse action against any current or former employee for filing the claim form and/or participating in the process distribution.

EXHIBIT "C"
U.S.E.E.O.C. VS. G.F.B. ENTERPRISES, LLC D/B/A/ LEXUS OF KENDALL

CLAIM FORM

1. Name:____

2. Date of Birth:____________________________________

3. Mailing Address:_________________________________

4. Daytime phone or contact:____________________________
(Failure to provide a daytime phone or the number of a person who can take a message for you during the day will result in our inability to process your claim).

5. Dates of Employment:______________________

6. If former employee, reason(s) for separation with Lexus of Kendall:____________
____

7. Job Title:_______________________________

8. Do you believe that you were subjected to a racially hostile environment at Lexus of Kendall because of your race? Yes ________ No________

9. If you answered yes to the question above, please provide a statement as to why including: (1) the name of person(s) who harassed you; (2) a list of the racially offensive comments that you were subjected to; and (3) the names of witnesses who may support your belief that you were subjected to a racially hostile environment. ____________________
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This enclosed claim form must be completed and returned on or before May 30, 2003.

EXHIBIT "D"
U.S.E.E.O.C. VS. G.F.B. ENTERPRISES, LLC D/B/A/ LEXUS OF KENDALL

Notification of Claimant Status

We are in receipt of, and have carefully reviewed your claim form, documentation and interview notes, if applicable, for the above matter. The following constitutes the EEOC's determination;

Claimant status

1. Meets all criteria for claimants: Yes______ No ______
Comment ____
____
____
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____
____

2. Eligible for monetary awards: No _____ Yes _____ Amount _____
Comments____
____
____
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If you disagree with the EEOC's determination; you have until ________________ to submit a letter to the court indicating any disagreement you may have with your claimant status/proposed monetary award, and the reasons therefore. **If you have no disagreement, please do not send a letter to the court.** Letters should be addressed as follows: United States District Court, Southern Division, Federal Courthouse Square, 301 N. Miami Avenue, Miami, Florida 33128. Both on the outside of the envelope and in the text of the letter make reference to U.S.E.E.O.C. v. G.F.B. Enterprises, LLC d/b/a Lexus of Kendall.

You must also send a copy to Kenneth L. Gillespie, Trial Attorney, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, FL 33131. Please make reference on the outside of the envelope to U.S.E.E.O.C. v. G.F.B. Enterprises, LLC d/b/a Lexus of Kendall.